

## REMARKS

### **A. Background**

Initially, On May 31, 2007, applicant filed a response to the final Office Action that was issued on April 16, 2007. On July 11, 2007, an Advisory Action was issued stating that the proposed amendments submitted in the May 31<sup>st</sup> response would not be entered. However, the Patent Office did accept the fee for the two additional independent claims that were filed in the May 31<sup>st</sup> response. This response replaces the previously filed May 31<sup>st</sup> response. Furthermore, because the fee for the addition of two independent claims was accepted in the May 31 response, applicant is not including herewith an additional fee for the two independent claims added herein.

Claims 14-21, 23-28, 30, 31, 38-47, 49-51, 55, 56, and 58-63 were pending in the application at the time of the Office Action with claims 16, 17, 25, 41, 44, 49, and 51 being withdrawn from consideration. The Office Action specifically allowed claims 26-28, 30, 31, 38-40, 42, 43, 45-47, 50, 55, 56, and 58-62. The Office Action rejected claims 14, 15, 23 and 24 as being anticipated by or obvious over cited art. Claims 18-21 and 63 were rejected as being dependent upon a rejected base claim but would be allowed if rewritten in independent form including the limitations of the claims from which they depend. By this response Applicant has cancelled claim 15; amended claims 14, 19, and 63; and added new claims 64-67. As such, claims 14, 16-21, 23-28, 30, 31, 38-47, 49-51, 55, 56, and 58-67 are presented for the Examiner's consideration in light of the following remarks with claims 16, 17, 25, 41, 44, 49, and 51 remaining withdrawn.

**B. Proposed Claim Amendments**

Independent claim 14 has been amended herein to incorporate the limitations of claim 15, which previously depended from claim 14, and to further define the central longitudinal axis that passes through the stem. New claims 64 and 65 are respectively old claims 18 and 21, rewritten in independent form to incorporate the limitations of claim 14, from which claims 18 and 21 previously depended. Claims 19 and 63 previously depended from claim 18 and have herein been amended to depend from claim 64 which is the combination of prior claims 14 and 18. New claims 66 and 67 further define the configuration and orientation of the stem and are supported at least by original Figure 12B. In view of the forgoing, applicant submits that the amendments to the claims do not add new matter and entry thereof is respectfully requested.

**C. Rejection on the Merits**

1. Anticipation Rejections

Page 2 of the Office Action rejects claims 14 and 15 under 35 USC § 102(b) as being anticipated by U.S. Patent No. 6,102,954 to Albrektsson et al. Applicant respectfully traverses this rejection.

As noted above, claim 14 has been amended herein to incorporate the limitations of claim 15 and to further define the central longitudinal axis that passes through the stem. As such, claim 14 now recites, “the stem having a proximal end formed on the bottom surface of the bearing plate and an opposing distal end that is spaced apart from the bottom surface of the bearing plate with a central longitudinal axis extending through the stem between the proximal end and the distal end thereof, the stem being oriented so that the central longitudinal axis extending from the proximal end of the stem intersects with and passes through the base plate

adjacent to the proximal end of the stem and an inside angle is formed between the central longitudinal axis of the stem and the bottom surface of the bearing plate in a range between about 30° to about 80°.” Applicant submits that this limitation, in combination with the other limitations of claim 14, is not taught or suggested by the cited art.

In the anticipation rejection of claims 14 and 15, the Office Action asserts that the claims are anticipated by the embodiment depicted in Figures 15-17 of Albrektsson. In general, Albrektsson discloses a prosthesis for mounting on a tibia plateau formed at the proximal end of a tibia. As depicted in Figures 15-17 and explained at col. 9, line 56 to col. 10, line 6, Albrektsson discloses a plate 230 having a top surface and an opposing bottom surface that are generally parallel to each other. A pair of elongated fixtures 231 are mounted on the bottom surface of plate 230 so as to extend along the width of plate 230 in substantially parallel alignment with plate 230. A threaded bore 256 extends along the longitudinal axis of fixture 230. In addition, a bore hole 253 is cut through the top surface of plate 230 and transversely extends down through each elongate fixture 231 so as to intersect with each longitudinal bore 256.

During use, as best illustrated with another embodiment depicted in Figure 12, plate 230 is horizontally slide onto the top surface of the resected tibia plateau while the fixtures 231 are simultaneously horizontally slid into corresponding bores that are horizontally drilled into the tibia just below the top surface of the tibia plateau. Returning of Figures 15 and 16, a screw 254 can then be passed down through each bore hole 253 and into the tibia to help prevent movement of the prosthesis. A locking screw 257 is passed down each longitudinal bore 256 of fixtures 213 so as to engage screws 254 and thereby hold them in place.

The Office Action equates plate 230 and elongate fixture 231 of Albrectsson with the “bearing plate” and “stem,” respectively, of the invention as recited in claim 14. However, it is both self evident from the drawings in Figures 15 and 17 of Albrectsson and is expressly taught in Albrectsson that the “longitudinal axis” of fixtures 231 is the axis which extends along the elongated length of fixtures 231, *i.e.*, along the length bore 256. See col. 9, line 67 and col. 10, line 9-11. Furthermore, as discussed above, this “longitudinal axis” of fixtures 231 extends parallel to the bottom surface of plate 230. Accordingly, because the longitudinal axis of each fixture 231 extends parallel to the bottom surface of plate 230, the longitudinal axis of each fixture 231 of Albrectsson does not intersect the bottom surface of plate 230 and does not form an inside angle with the bottom surface of plate 230. As a result, Albrectsson does not disclose or suggest “the stem having **a proximal end formed on the bottom surface of the bearing plate and an opposing distal end that is spaced apart from the bottom surface of the bearing plate** with a central longitudinal axis extending through the stem between the proximal end and the distal end thereof, the stem being oriented so that the **central longitudinal axis extending from the proximal end of the stem intersects with and passes through the base plate** adjacent to the proximal end of the stem and **an inside angle is formed between the central longitudinal axis of the stem and the bottom surface of the bearing plate in a range between about 30° to about 80°**,” as recited in amended claim 14.

In the Advisory Action, the Examiner asserts that the above claimed “inside angle” corresponds to the angle  $\theta$  depicted in Figure 15 of Albrectsson. Again, however, applicant notes that the longitudinal axis of fixture 231 as depicted in Figure 15 of Albrectsson extends parallel to the bottom surface of the plate 230 and thus the central longitudinal axis extending

from the proximal end of fixture 231 does not **“intersect[s] with and pass[es] through the base plate adjacent to the proximal end of the stem,”** as required by claim 14.

Furthermore, applicant submits that there is no reason to slope fixtures 231 of Albrectsson relative to the bottom surface of plate 230 since such sloping of fixtures 231 would significantly complicate the bone preparation and implant mounting process and would add increased material and cost to the Albrectsson implant.

Furthermore, assuming *arguendo* that the claimed “longitudinal axis” corresponded to the transverse axis extending through fixtures 231 from the bottom surface of plate 230, i.e., the central axis of bore 259 as shown in Figure 16, this axis of fixtures 231 extends orthogonally from the bottom surface of plate 230. As such, under this interpretation Albrectsson again does not disclose or suggest **“an inside angle is formed between the central longitudinal axis of the stem and the bottom surface of the bearing plate in a range between about 30° to about 80°,”** as recited in amended claim 14. Likewise, again there is simply no reason to slope the angle at which fixtures 231 project down from the bottom surface of plate 230.

In view of the foregoing, applicant submits that claim 14 is not anticipated by the prior art and withdrawal of the rejection is respectfully requested.

Applicant submits that new claims 66 and 67 which depend from claim 14 are also allowable over Albrectsson. Again, because the longitudinal axis of each fixture 231 of Albrectsson extends parallel to the bottom surface of plate 230, Albrectsson does not disclose or suggest “wherein the stem is oriented so that a distance from the bottom surface of the base plate to the central longitudinal axis at the distal end of the stem is greater than a distance from the bottom surface of the base plate to the central longitudinal axis at the proximal end of the stem” as recited in claim 66 or “wherein the stem is oriented so that a substantially V-shaped notch is formed between the bottom surface of the base plate and an exterior surface of the stem,” as recited in claim 67.

2. Obviousness Rejection

Page 3 of the Office Action rejects claims 23 and 24 under 35 USC § 103 as being obvious over U.S. Patent No. 6,102,954 to Albrektsson et al. Claims 23 and 24 depend from claim 14 and thus incorporate the limitations thereof. As such, applicant submits that claims 23 and 24 are not obvious over the Albrektsson patent for at least the same reasons as discussed above with regard to claim 14. Accordingly, applicant respectfully requests that the obviousness rejection with regard to claims 23 and 24 be withdrawn.

3. Previously Withdrawn Claims

As noted above, claims 16, 17, 25, 41, 44, 49, and 51 were withdrawn in an earlier paper in response to an election requirement. Claims 41, 44, 49, and 51 depend from the allowed independent claim 38 and thus incorporate the limitations thereof. As such, Applicant submits that claims 41, 44, 49, and 51 are also in condition for allowance for at least the same reasons that claim 38 has been allowed. Accordingly, Applicant respectfully requests that claims 41, 44, 49, and 51 be rejoined as is proper according to MPEP § 821.04. Applicant also requests that claims 16, 17, 25 be rejoined upon the allowance of claim 14.

No other objections or rejections are set forth in the Office Action.

**D. Allowable Subject Matter**

The Office Action specifically allows claims 26-28, 30, 31, 38-40, 42, 43, 45-47, 50, 55, 56, and 58-62. Applicant wishes to thank the Examiner for the careful review and allowance of these claims.

The Office Action objects to claims 18-21 and 63 as being dependent upon a rejected base claim, but states that these claims would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. As noted above, Applicant has herein rewritten claims 18 and 21 in independent form as new claims 64 and 65 to include the limitations of prior claim 14, from which claims 18 and 21 directly depended. As such, Applicant respectfully submits that claims 64 and 65 are in condition for allowance.

With regard to claims 19, 20, and 63, Applicant declines to rewrite those claims in independent form at this time. Inasmuch as claims 19, 20, and 63 now depend from new claim 64, Applicant submits that claims 19, 20, and 63 are in allowable condition for at least the same reasons for which claim 64 is allowable.

#### **E. Conclusion**

Applicant notes that this response does not discuss every reason why the claims of the present application are distinguished over the cited art. Most notably, applicant submits that many if not all of the rejected dependent claims are independently distinguishable over the cited art. Applicant has merely submitted those arguments which it considers sufficient to clearly distinguish the claims over the cited art.

In view of the foregoing, applicant respectfully requests the Examiner's reconsideration and allowance of claims 14, 16-21, 23-28, 30, 31, 38-47, 49-51, 55, 56, and 58-67 as amended and presented herein.

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Dated this 9<sup>th</sup> day of October 2007.

Respectfully submitted,

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